

THE  
SHERIFFS' PETITION

WITH  
STATEMENTS OF GRIEVANCES  
AND PROOFS;

ALSO  
DRAFT OF AN ACT,

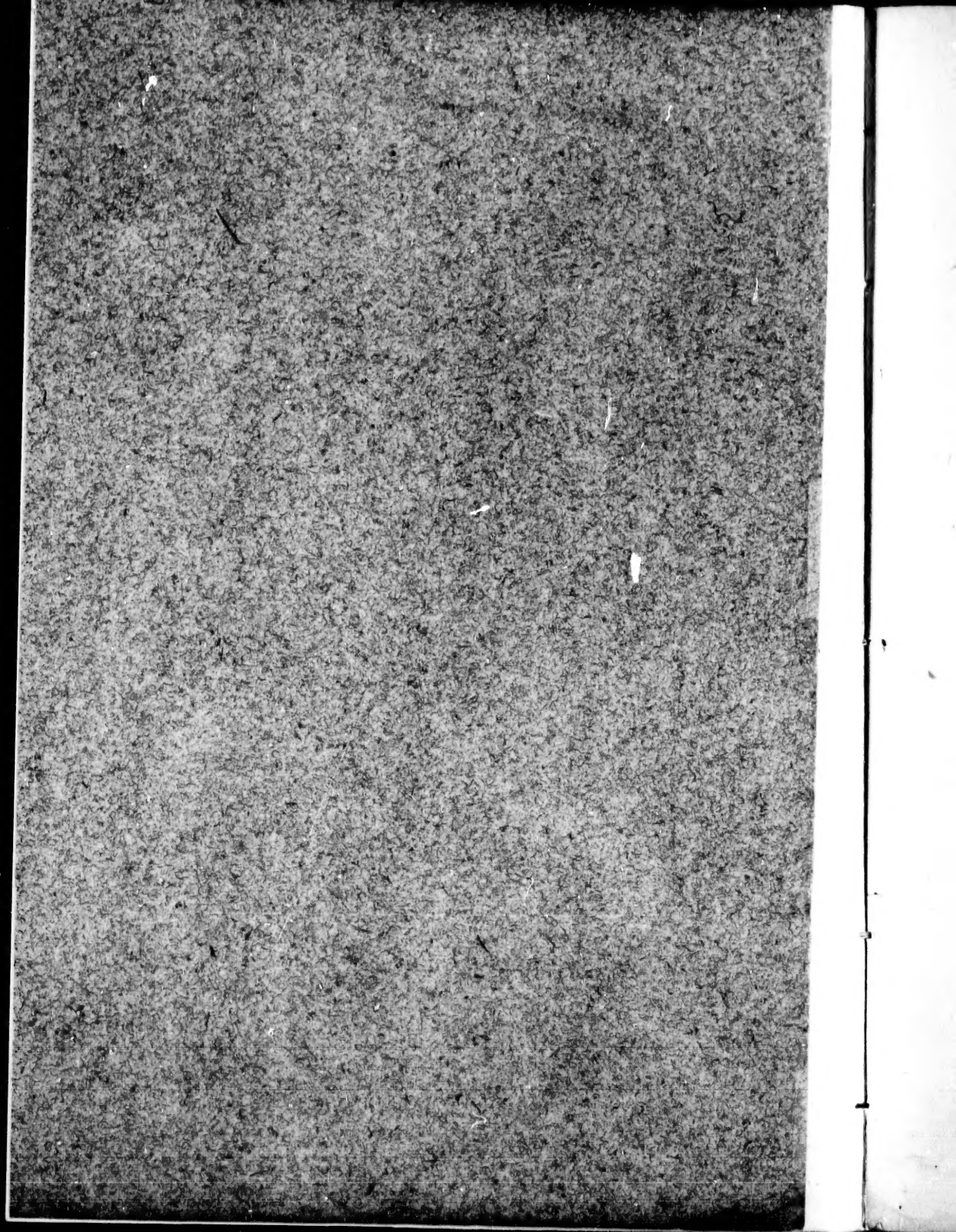
TO REDRESS THESE GRIEVANCES, AND TO PROVIDE FOR THE  
EXECUTION OF ALL PAPERS IN LEGAL PROCEEDINGS  
AS CHEAPLY AS POSSIBLE.

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Toronto :

PRINTED BY HUNTER, ROSE AND COMPANY.

1880.



*With the Author's compliments*

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## PREFACE.

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Shortly after my appointment to the Shrievalty of this County, on the 1st August, 1875, I discovered that a large number of papers, which the law intended should be served by the Sheriffs, and from which they were to derive a large portion of their incomes, were being served by lawyers' clerks, division court bailiffs, and others.

With a view of ascertaining the extent to which this practice was carried, I placed a Motion in the hands of my friend Mr. Sinclair, M.P.P. for North Bruce, asking for a return of all Writs of Summons and Bills in Chancery, issued in Ontario, in the preceding year, and also the number of such papers as were executed by the Sheriffs during the same period, in order to discover the proportion served by the Lawyers. Mr. Sinclair brought forward his motion on the evening of January 10th, 1877, thinking that so reasonable a request would be readily granted; the motion, however, was hardly read, when the floor of Parliament bristled with Professional men on their feet, each more vehement in his opposition than his neighbour; they said the motion "*was not called for, and would entail unnecessary expense,*" "*that if the Lawyers served papers, they did so to save costs to the litigant, they did not, and could not collect for the service; the thing was done at the expense of the profession itself, in fact the execution of such papers was purely a labour of love?*"

The motion was dropped, and immediately Mr. Sinclair and myself were assailed through the columns of the press, and otherwise charged with having made an attempt to increase the Sheriffs' fees, and thereby add to the burdens of the people. I believe that this cry was used against Mr. Sinclair during the election, as a means of injuring him with his constituents.

All this opposition, however, strengthened my conviction that Process-serving, by others than the Sheriffs, was carried on to a much larger extent than was generally supposed, and was to those engaged in it a money-making business, and I determined not to relax my efforts, until I had ascertained the full extent of the evil.

Before the close of the year, I was in possession of a full and complete official return, such as I wanted, disclosing the startling fact, that the papers served by the Lawyers deprived the Sheriffs of upwards of \$20,500 per annum of their legal fees, being an average of \$554 taken from each of the thirty-seven Sheriffs in Ontario; but if no charge was made for these services, as we are assured by more than one member during the debate, on Mr. Sinclair's motion, the \$20,500 which was lost to the Sheriffs, was saved to the litigants, and thus the Public were benefited.

I was rather sceptical as to the truth of the assertion, that these services were made for the purely benevolent object of saving costs to the litigant, and not for the benefit of the Attorney—and determined, if possible, to ascertain the true state of the case.

I am now, after the lapse of two years (during which time I have made



most diligent enquiry), in a position to prove beyond a doubt, that, as a rule, no such free services are made, but on the contrary, the very men that told us that the Lawyers made the services for nothing, or at the expense of the profession itself, not only collect the Sheriffs' fees but sums double to what the Sheriffs would be entitled to, in addition to their own.

That Writs and other papers, which the Law meant should be served by the Sheriffs or their officers, are in numerous cases given to the Division Court Bailiffs, by the Lawyers, is proved beyond dispute by some two hundred letters which I have published in pamphlet form, from Division Court Clerks and Bailiffs.

Having ample proof of the truth of the statements I make, I am prepared to defend them before any tribunal that may be named to investigate them.

I have no quarrel with, or feeling of hostility towards the members of the legal profession, my intercourse with them has, with very few exceptions, been of the most friendly and satisfactory nature, and I would not be understood as in any way desiring to interfere with the duties, fees or emoluments which the Law assigns to them, and that is all we ask them to do with reference to the duties, fees and emoluments of the Sheriff's Office. At present a large sum of the fees and emoluments which the Law intended for the Sheriff are pocketed by others, who, under pretext of saving costs to the litigant, serve papers that the Law intended should be served by the Sheriff; while their real object is to pocket the Sheriff's fees, and as much more taken wrongfully from the defendant, as conclusively proven by the taxed bills of costs herewith published. I, for one, have determined not to sit in silence while such wrongs are being practised on myself, and the public, without raising my voice against them and using all lawful means to put an end to such an evil. Nor shall I permit myself, my Bailiff or Officers, to be utilized as instruments of wrong-doing and oppression, in the way of collecting large sums in the shape of fees, from the defendant, for the Attorney, for which there is no law or authority, and this we are frequently asked to do as shown by the list of eighteen Writs of Execution published in the following pages, on which I am asked to collect ~~\$22.17~~ more than the legal fee, being an average over-charge of ~~\$1.25~~ on each Writ, being nearly two and a half sheriff's fees in each case, and such illegal charges are, as a rule, made by those *good men* who serve Writs and other papers themselves, and tell the public they make no charge and do it to save costs to the poor and distressed defendant. I am prepared faithfully, honestly and promptly to perform, execute and enforce all the duties which the Law imposes upon me, disagreeable and painful to my feelings as some of them are. But to go beyond the Law and permit myself and my officers, with the legal machinery at our command, to be utilized as instruments of wrong-doing and oppression is what I shall resist to the death—and feel assured that all honest men both lay and professional will sustain me in this resolution.

I would further invite the public to a careful perusal of the Bill which I have prepared, and herewith publish—the object of which is:

- 1st. —To surrender over ten per cent. of the Sheriff's fees to the public to be given to the Municipalities or other such purpose as the Government in their judgment may deem best in the public interest.

\$5.41

\$97.47

- 2nd.—To provide that all papers in legal proceedings shall be served by the Sheriff, or by his authority.
- 3rd.—To appoint Bailiffs in outlying Towns and Villages, for the convenience of Barristers or Attorneys there practising—thus saving time and expense in the serving of papers.
- 4th.—To provide that the Lawyers themselves may serve all papers if they see fit.

While I have done all I could in framing the Bill, to secure to the Sheriff his fees, and the proposed percentage to the public, I have provided for cheapness and dispatch in the execution of all papers in legal proceedings, and now submit it to the public for their judgment.

In conclusion, I beg to say that I have thus frankly and openly stated the grievances of which we complain, as well as the measures I suggest for their removal, those who know me best know I never fought under cover. I shall not do so now. I am advocating a just and righteous measure, I have an enlightened public opinion and a strong and honest government to appeal to, and I shall not appeal in vain : to these tribunals I submit our case, as one in which they, as well as the Sheriffs, are interested—hoping it will meet with full and free discussion, investigation and redress.

*Sheriff's Office,*  
Hamilton, 11th October,  
1879. }

ARCH. MCKELLAR,  
*Sheriff Co. Wentworth.*

#97-17



*To the Honourable the Legislative Assembly of the Province of Ontario :*

**THE PETITION** of the undersigned SHERIFFS of the said Province,  
**HUMBLY SHEWETH :—**

1st.—That owing to the various changes made in the Law within the last few years,—more particularly the Sale of Land for Taxes, and the enactment of the Bankrupt Law,—many of the duties formerly discharged by Sheriffs have been transferred to others ; thereby greatly reducing the emoluments of the Sheriffs' offices.

2nd.—That in view of these facts, the Judges of the Superior Courts generously increased the Tariff of Fees, in order, in some measure, to make good the heavy (in some cases almost ruinous) reductions made in your Petitioners' incomes.

3rd.—That one of the principal items on which the tariff was increased, and from which your Petitioners expected considerable emolument, was the serving of all papers in legal proceedings in the Superior and County Courts, which the Law never intended should be served by others, unless the Sheriff failed to do so within the time prescribed by the Law : *Vide* Revised Statutes of Ontario, Chap. 50 ; Secs. 23 and 24.

4th.—That the leading Professional men at the Bar, in all parts of the Province, interpret the Law in accordance with the views expressed by your Petitioners, and scrupulously abstain from serving any papers which the Law provides should be served by the Sheriff, and in public and private express their disapproval of Process-serving by members of the Bar, as being unjust to the Sheriffs, and beneath the dignity which should characterize members of the legal profession.

5th.—That another class of the members of the Bar of which your Petitioners have great reason to complain, and whose practices they desire to bring under the notice of your Honourable House, constantly violate both the spirit and letter of the law, seldom or never giving papers for service to the Sheriff, employing their own clerks or others to perform the duty, and allege that such services are only made in cases of great urgency, when the Sheriff's officer could not be had in time ; that no charge can be made or fees collected, and is done therefore in the interest of the unfortunate litigant.

6th.—Your Petitioners, in answer to the plea of "urgent necessity" would call the attention of your Honourable House to the fact that, by a return obtained in 1877, the number of Writs and Bills of Complaint issued in Ontario, in the preceding year, was Twenty thousand three hundred and eighty three ; of this number, Nine thousand three hundred and seventeen were served by others than the Sheriffs, or within eight hundred and seventy-four of being one-half of the total number issued : a number too large to be defended on the plea of "urgent necessity."

7th.—That in answer to the plea that when services are made by other

than the Sheriff or Sheriff's officer, no charge is made or fee collected, would state that they are in a position to prove that charges are made and fees collected for such services, and frequently, if not always, much more than would have been paid the Sheriff.

8th.—Your Petitioners beg to state further in reply to the assertion, that for services made by others than a Sheriff, or a Sheriff's officer, no fees can be collected, inasmuch as the Taxing officer will not allow for such services; that much more than half the suits in which legal proceedings are commenced, and in which Writs and other papers are served, never go to judgment, but are settled in the Attorney's office; where a Bill of Costs is prepared and presented to the Defendant, who, as a rule, acts without an Attorney, is himself ignorant of the legal tariff of fees, and thankful to get out of the clutches of the law on any terms, and at any cost, pays the Bill as presented, which the eye of the Taxing officer never sees; and which, as a rule, includes a sum in addition to the Attorney's own legal expenses, amounting to more than double the fees to which the Sheriff would have been entitled had he make the service himself.

9th.—Your Petitioners further beg to call the attention of your Honourable House to the fact that the services made by Attorneys through their own clerks or others than the Sheriff or his officer, are chiefly made in Towns or Cities where comparative little time is lost, or labour bestowed, while Writs and other papers to be served on parties at a distance, and whose residences are frequently unknown are given to the Sheriff, whose Bailiff not unfrequently, after long journeys and unremitting efforts, fails to find the Defendant; thus often putting the Sheriff to great expense, for which he receives no remuneration.

10th.—Your Petitioners would further state that it is no uncommon thing to be told verbally and in writing, by many of such members of the profession as are engaged in Process-serving, and who are pressed, it may be, for a long overdue account, or some other trifling or imaginary grievance, that in future they will have all papers served by others than the Sheriff. Thus reminding your Petitioners of their dependence upon them, as they can at their pleasure increase or diminish your Petitioners' incomes.

11th.—Your Petitioners submit they should not be placed in this humiliating position, that the law should clearly define and secure to them their rights and duties on the one hand, and rigidly provide for the enforcement as well as the prompt and faithful performance of them on the other.

12th.—Your Petitioners would further beg to call the attention of your Honourable House to the fact, that the Clerks and Bailiffs of the Division Court who are paid by fees, are protected by Law, no service from that Court being recognized as legal, unless made by its own officers, while the Sheriffs, also paid by fees, and compelled to keep and pay Bailiffs, are not so protected. Writs and other papers which should be served by a Sheriff's officer being commonly served by Division Court Bailiffs or others employed by the Attorney for that purpose, as fully proved by documentary evidence in the possession of your Petitioners.

13th.—In view of all these facts, your Petitioners respectfully submit that the practice of Process-serving by Attorneys or others employed by them, is an act of great injustice to the honest practitioner, who pays for

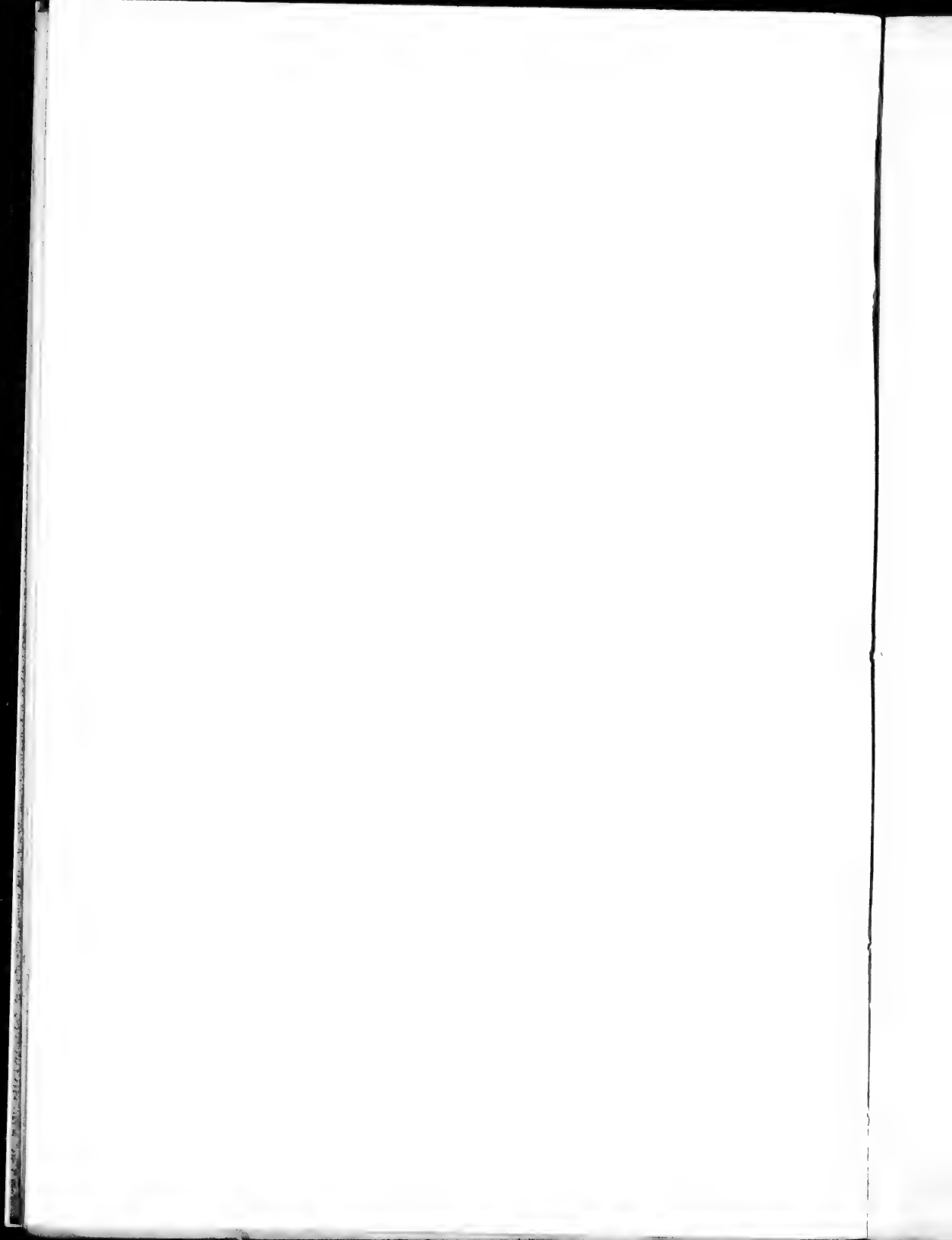
his services through a Sheriff's officer, as well as to your Petitioners, whose fees are wrongfully pocketed by others without benefit to the public.

14th.—In conclusion, your petitioners humbly pray, that your Honourable House may be pleased to appoint a committee, before whom they may be heard more fully touching the matters they complain of, with a view of enabling your Honourable House to do what may appear just and proper in the premises.

And your petitioners, as in duty bound, will ever pray.

John McEwen, Sheriff, County of Essex.  
 James Flintoft, Sheriff, County of Lambton.  
 William Glass, Sheriff, County of Middlesex.  
 Colin Munro, Sheriff, County of Elgin.  
 George Perry, Sheriff, County of Oxford.  
 Thomas D. McConkey, Sheriff, County of Simcoe.  
 George Davidson, Sheriff, County of Waterloo.  
 Robert Brody, Sheriff, County of Peel.  
 John Hossie, Sheriff, County of Perth.  
 Joseph Maughan, Sheriff, County of Grey.  
 Robert Gibbons, Sheriff, County of Huron.  
 William Sutton, Sheriff, County of Bruce.  
 Peter Gow, Sheriff, County of Wellington.  
 Edmund Deedes, Sheriff, County of Norfolk.  
 Archibald McKellar, Sheriff, County of Wentworth.  
 John Smith, Sheriff, County of Brant.  
 Robert Hobson, Sheriff, County of Welland.  
 George Kempt, Sheriff, County of Victoria.  
 James P. Wells, Sheriff, County of Prescott and Russell.  
 Nelson G. Reynolds, Sheriff, County of Ontario.  
 William F. Powell, Sheriff, County of Carleton.  
 John Mercer, Sheriff, County of Kent.  
 Robert H. Davis, Sheriff, County of Haldimand.  
 G. C. McKindsey, Sheriff, County of Halton.  
 R. N. Waddell, Sheriff, County of Northumberland and Durham.  
 James Hall, Sheriff, County of Peterboro.  
 G. Taylor, Sheriff, County of Hastings.  
 O. T. Pruyn, Sheriff, County of Lennox and Addington.  
 James Gillespie, Sheriff, County of Prince Edward.  
 William Ferguson, Sheriff, County of Renfrew.  
 James Thompson, Sheriff, County of Lanark.  
 William Patrick, Sheriff, County of Leeds and Grenville.  
 D. G. McIntyre, Sheriff, County of Stormont, Dundas and Glengarry.  
 R. Carney, Sheriff, Algoma.

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McNAIR vs. GOERING *et al.*

In this cause the facts are, that young McNair, the Plaintiff's son, served the paper and made the usual affidavit, that he was the Sheriff's officer, while the fact is that the Sheriff was not aware that such a being was in existence; and in order to have the Bill of Costs taxed, the son of Plaintiff's Attorney made another Affidavit, that he paid the Sheriff's fees, which was untrue, and that he charged for letters which were never written in reference to papers that never were in the Sheriff's office, and in that way collected over five dollars for Sheriff's fees.

The Bill was taxed without Defendant's Attorney being notified, and the figures on the right hand side of the red line, amounting to \$61.63 were struck off. When Defendant's Attorney became aware that the Bill was so taxed in his absence, and without his knowledge, he had it taxed a second time, when a further sum of \$60.88, as shown by the figures on the left hand side of the red line, were struck off. We would commend this, as well as the other taxed Bills of Costs hereunto annexed to the prayerful consideration of those who have doubts that, in addition to their own fees, sums much larger than the Sheriff's fees, are collected by such members of the Profession as are engaged in Process-serving.

Here we have a Bill of Costs of \$288.08 made up to collect \$79.80. The Taxing Master strikes off \$122.51 as wrongfully charged, and in the \$122.51 is included \$13.37 for Sheriff's Fees for papers never served by the Sheriff. No doubt the Attorney would tell the public that he made the service through his own Bailiff to save the Sheriff's fees to the litigant. Why then did he charge the Sheriff's fees and the additional sum of \$109.14 wrongfully to the Defendant? This is a fair specimen of the benefits derived by the litigants from those who do their own Process-serving.

## IN THE QUEEN'S BENCH.

SAMUEL MCNAIR, *Plaintiff*, vs. JOHN W. GOERING and ELIJAH S. WHIPPLE, *Defendants*.

## BILL OF COSTS.

2ND TAXA- TION.	1ST TAXA- TION.	No.		
\$	\$		\$	\$
		1 Instructions to sue .....	3 00	
		2 Letters to Defendants and paid .....	1 00	0 06
		3 Summonses and paid ..	2 00	1 10
1 00		4 Special Endorsement .....	1 00	
	0 50	5 Notices .....	0 50	
1 00	\$0 50	Forward .....	\$7 50	\$2 16



## BILL OF COSTS.

2ND TAXA- TION.	1ST. TAXA- TION.	No.		
\$	\$		<i>Brought forward</i> .....	\$ 7 50 \$2 16
1 00	0 50			
		6	Two copies of Writ.....	2 00
0 59		7	Letters to Sheriff .....	0 50 0 09
	0 50	8	Letters to Sheriff to return Writ.....	0 50 0 03
		9	Attending to return.....	0 50 0 05
0 55		10	Letters to Sheriff with fees .....	0 50 4 96
		11	Paid Sheriff's Fees .....	
		12	Affidavit of payment of mileage .....	1 00 0 10
0 60		13	Attending search appearance of Whipple.....	0 50 0 10
0 60		14	Attending search appearance Goering .....	0 50
		15	Instructions for pleadings.....	1 50
		16	Drawing Declaration .....	2 00
	0 50	17	Attending Counsel with and for .....	0 50
	2 00	18	Counsel fee revising.....	
		19	Copy to file .....	1 00 2 00
		20	Attending to file and paid .....	0 50 0 10
		21	Copy to serve .....	1 00
		22	Notice to plead and copy .....	0 50
		23	Attending to serve .....	0 50
0 60		24	Attending to search pleas and paid .....	0 50 0 10
		25	Term fees .....	1 00
		26	Particulars of claim and copy .....	0 50
1 00		27	Attending to serve.....	0 50
1 00		28	Drawing Replication.....	2 00
		29	Copy to file .....	1 00
		30	Attending to file and paid .....	0 50
1 00		31	Copy to serve .....	1 00
		32	Attending to serve.....	0 50
0 50		33	Notice to rejoin and copy.....	0 50
	0 60	34	Attending to search rejoinder and paid .....	0 50 0 10
	1 35	35	Instructions to take money out of Court.....	1 00
0 30		36	Draft order of Plaintiff.....	0 50
		37	Affidavit verifying signature of Plaintiff .....	0 60
		38	Affidavit attending Com. and paid .....	0 50 0 20
	0 50	39	Attending to draw money out .....	1 00
		40	Instructions to apply for order to examine.....	1 00
1 00		41	Instructions for Affidavit .....	1 00
		42	Affidavit for order 3 folios .....	0 60
		43	Attending Com. and paid.....	0 50 0 20
		44	Attending chambers for order.....	1 00
		45	Fee on order.....	1 00
		46	Paid for order .....	
		47	Copy of order .....	0 50 0 60
0 50		48	Attending for Applicant for Whipple .....	0 50
0 20		49	Paid for same .....	
0 50		50	Copy of appointment.....	0 50 0 20
0 50		51	Attending to serve order on Whipple .....	0 50
1 00		52	Paid him conduct money .....	
	2 00	53	Instructions for Brief on Examination .....	2 00 1 06
		54	Brief on Examination .....	2 00
2 00		55	Attending on Applicant and Defendant not present .....	2 00
1 00	1 00	56	Attending for new Applicant and paid .....	0 50 0 20
		57	Attending to serve him with new Applicant .....	0 50
		58	Part conduct money .....	
		59	Attending on Applicant two hours .....	4 00 1 00
		60	Paid Examiner .....	
		61	Attending to bespeak and for copy of examination.....	1 00 3 00
		62	Paid for same .....	
0 50		63	Attending to pay Examiner .....	0 50 1 25
10 94	\$9 95		<i>Forward</i> .....	\$50 20 \$16 43

# BILL OF COSTS.

11

2ND TAXA- TION.	1ST. TAXA- TION.	No.			
\$2 16	\$		<i>Brought forward</i> .....	\$50 20	\$16 43
	\$10 94	\$9 95			
0 09		1 50	64 Received notice to proceed, letter to Client .....	0 50	0 03
0 03			65 Issue book .....	1 50	
0 05			66 Notice of Trial and Copy .....	0 50	
4 96			67 Attending to serve .....	0 50	
			68 Letter to Client advising for trial .....	0 50	0 03
0 10			69 Subpoena and paid .....	1 00	1 00
0 10			70 Nine copies .....	9 00	
			71 Letter to Sheriff with .....	0 50	0 15
		0 50	72 Attending for return not served .....	0 50	
			73 Instructions for Brief .....	2 00	
		2 00	74 Brief .....	2 00	
2 00	6 00	3 60	75 Original matter on brief 6 folios .....	12 00	
0 10	5 00		76 Attending Counsel with Brief .....	0 50	
			77 Fee advising on evidence .....		5 00
			78 Record .....	1 50	
			79 Fee on Record .....	1 00	
			80 Attending to pass and paid .....	0 50	1 00
0 10	3 00		81 Attending to enter and paid .....	0 50	5 00
			82 Attorney attending trial .....	2 00	
		10 00	83 Counsel fee remnant .....		20 00
			84 Paid Crier .....		0 60
			85 Paid Sheriff .....		1 00
			86 Received order to examine Defendant .....		
		0 53	87 Letter when advising .....	0 50	0 03
		2 00	88 Instructions for Brief and Examination .....	2 00	
		2 00	89 Brief on Examination .....	2 00	
0 10			90 Attending on examination 3 hours .....	6 00	
			91 Attending to bespeak and copy of Examination .....	1 00	
	0 50	1 15	92 Paid Examiner .....		3 45
			93 Attending to pay .....	0 50	
0 20			94 Notice of Trial and Copy .....	0 50	
			95 Attending to serve .....	0 50	
			96 Letter to Client advising .....	0 50	0 03
			97 Subpoena and paid .....	1 00	1 00
			98 Nine Copies .....	9 00	
	0 65		99 Letter to Sheriff with Writ .....	0 50	0 15
0 20	0 63		100 Letter to Sheriff to return same .....	0 50	0 03
	0 50		101 Attending for return .....	0 50	
	0 55		102 Letter to Sheriff with fees .....	0 50	0 05
0 60	10 04		103 Paid Sheriff's fees .....		10 04
	1 00		104 Affidavit of payment .....	1 00	
			105 Attorney attending trial .....	2 00	
0 20	20 00		106 Counsel fee at Trial .....		50 00
			107 Paid Crier and Witness .....		1 95
06		1 50	108 Paid Sheriff .....		1 00
			109 Paid on Verdict .....		1 50
			110 Attending for Record and paid .....	0 50	0 50
	1 50		111 Postea .....	1 00	
20	1 50		112 Judgment Roll .....	1 50	
			113 Judgment .....	1 00	
00	1 20	1 40	114 Bill of Costs 12 folios .....	2 40	
			115 Copy of same .....	1 20	
00			116 Instructions for Affidavits of Disbursements .....	1 00	
		1 40	117 Affidavit of Disbursements 12 folios .....	2 40	
25		0 70	118 Attending to serve and paid .....	0 50	
			119 Copy to serve .....	1 20	
43			120 Attending to serve .....	0 50	
			121 Notice of Taxation .....	0 50	
	\$46 98	\$56 98	<i>Forward</i> .....	\$129 20	\$119 98

2ND TAXA- TION.	1ST TAXA- TION.	No.		
\$	\$		<i>Brought forward</i> .....	\$129 20 \$119 98
46 98	56 98	122	Attending to serve Bill.....	0 50
0 50		123	Attending on Taxation.....	1 00
8 00		124	Witness Fees .....	25 00
	4 65	125	Term Fees .....	7 00
5 40		126	Costs signing Judgment .....	5 40
\$60 88	\$61 63			\$143 10 \$144 98
				144 98
				\$288 08
			Taxed off on first Taxation \$61 63	
			Taxed off on Second " \$60 88	
				\$122 51
				\$166 57
			Damages....	79 80
				\$246 37

"A."

#### IN THE QUEEN'S BENCH.

SAMUEL McNAIR, Plaintiff *vs.* JOHN W. GOERING, AND ELIJAH S. WHIPPLE, Defendants.

I, Edmund Cahill, of the City of Hamilton, in the County of Wentworth, Student-at-law, make oath and say:—(1.) That I did on the Fifteenth day of February, A.D. 1877, pay to the Sheriff of the County of Wentworth the sum of Ten 4-100 Dollars, and his fees for service of the Writ of Subpœna herein, by paying the same to a Clerk in the office of the said Sheriff.

(Signed), ED. CAHILL:

Sworn before me at Hamilton, in the County of Wentworth, this 15th day of February, A.D. 1877.

ROBERT R. GAGE, A Com. &c.

"B."

#### IN THE QUEENS BENCH.

SAMUEL McNAIR, Plaintiff *vs.* JOHN W. GOERING AND ELIJAH S. WHIPPLE, Defendants.

I, Samuel McNair, the younger, of the City of Hamilton, in the County of Wentworth, the Sheriff's officer, make oath and say:—(1.) That I did on the—day of January, one thousand eight hundred and seventy-seven, serve J. McNair, Jr., Donald Dawson, James Cauchnoor, William Patton, Randolph Peters, J. R. Vanfleet, W. A. Smith and Samuel Kent, each with a true copy of the Subpœna hereunto annexed, by delivering such

copy to, and leaving the same with each of the said parties. (2.) That to effect the said services I necessarily travelled thirty-three miles.

(Signed), SAMUEL MCNAIR, JR.

Sworn before me at Hamilton, in the County of Wentworth, this 7th day of February, 1877.

(Signed), CHAS. LEMON, A Com. &c.

"C."

SUBPŒNA—ONTARIO, TO WIT :—Victoria, by the Grace of God of the United Kingdom of Great Britian and Ireland, Queen, Defender of the Faith.

To Samuel McNair the younger, John W. Goering, Donald Dawson, James Cauchnoor, Randolph Peters, J. R. Vanfleet, Colonel Patton, Samuel Kent and W. A. Smith—GREETING.

We Command You, that all excuses being laid aside, you and every of you, be and appear in your proper persons before our Justices assigned to

(L. S.)	} take the Assizes in and for the County of Wentworth, at
L. F. \$1.00	

Hamilton, in the said County, on Monday, the Eighth day of January, 1877, by twelve of the clock in the forenoon of the same day, and so from day to day until the cause hereinafter mentioned shall be tried or otherwise disposed of, to testify all and singular those things which you or either of you know in a certain case now pending in our Court of Queen's Bench at Toronto, between Samuel McNair, Plaintiff, and John W. Goering and Elijah S. Whipple, Defendants, in an action on promises, on the part of the Plaintiff, and at the said assizes to be tried by a Jury of the Country ; and this you or any of you shall by no means omit under the penalty upon each of you, of One Hundred Pounds.

Witness, the Honourable ROBERT ALEXANDER HARRISON, Chief Justice of our said Court, at Toronto, the Sixth day of December, in the year of our Lord 1876, in the fortieth year of our Reign.

(Signed), ALLAN CAMERON.

In the Queen's Bench.—Rec'd January 3rd, 1877.—McNair *vs.* Goering *et al.*—SUBPŒNA "A." This Subpœna was issued by James Cahill of the City of Hamilton, in the County of Wentworth, Attorney for the said Plaintiffs.

(Signed), JAMES CAHILL.

The service of this Subpœna appears by the Affidavit hereunto annexed. The auswer of

ARCHIBALD MCKELLAR, Sheriff.  
per A. D. McPherson.

Fees, \$10.04.

## IN THE QUEEN'S BENCH.

SAMUEL MCNAIR, Plaintiff, vs. JOHN W. GOERING and ELIJAH S. WHIPPLE, Defendants.

I, Archibald McKellar, of the City of Hamilton, in the County of Wentworth, Esquire, make oath and say :—

1. I am the Sheriff of the County of Wentworth.

2. That I have seen the original subpoena and affidavit of service thereof in this cause filed with the Deputy Clerk of the Crown and Pleas in and for the County of Wentworth, a copy of which subpoena and affidavit are hereto annexed, marked respectively "B" and "C." That the said Samuel McNair the younger, who makes the affidavit of service of said subpoena, is not in my employ, nor is he an officer of the Sheriff of the County of Wentworth, and he did not serve the said subpoena with my knowledge or consent. That the said subpoena and copies thereof, were never received in my office for service on the persons named in said subpoena, and was not served by any one with my authority; nor do I recognise the service of said subpoena as having been made with my authority. That the endorsement on said subpoena, "Rec'd Jan. 3rd, 1877,"—Fees, \$10.04—and the return endorsed thereon, "The service of this subpoena" appears from the entries in the Official books of my office to have been received on the eighth day of February instant, in the office from and the same day returned to James Cahill, the Plaintiff's Attorney herein, per E. C., and the entry, "special arrangement,  $\frac{1}{2}$  fees, \$5.02," made opposite the same. That these entries were made entirely without my knowledge or consent, and the first intimation I had thereof, was on the seventeenth instant, when Mr. Duff, the partner of the Defendants' Attorney herein, attended at my office for the purpose of ascertaining if said subpoena had been received by me for service, and when; and that then looking over the process book in my said office, I discovered the entry made as above.

3. That about the third day of February instant, I was informed by Angus D. McPherson, a clerk in my office, that Mr. Cahill had been speaking to him, and had informed him the Plaintiff had succeeded in the suit, and was desirous of making the Defendant pay all the costs he could, and wanted me to allow him to pass some papers he had served himself through my official books, so as to charge the fees to Sheriff for serving same. And that I distinctly in reply told said Angus D. McPherson I would not consent to any such proceeding, and on no account would I allow such a transaction to take place in my office.

(Signed), A. McKELLAR.

Sworn before me at the City of Hamilton, in the County of Wentworth, this 20th day of Feb., A.D. 1877.

(Signed), ROBT. W. ADAMS,  
A Com., &c.

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## IN THE QUEEN'S BENCH.

SAMUEL McNAIR, Plaintiff, and JOHN W. GOERING and ELIJAH S. WHIPPLE, Defendants.

I, Angus D. McPherson, of the City of Hamilton, in the County of Wentworth, Clerk, make oath and say:—

1. I am a Clerk in the office of the Sheriff of the County of Wentworth.
2. That on or about the first day of February instant, Edmund Cahill, a son of James Cahill, the Plaintiff's Attorney herein, came to me at the office of said Sheriff and told me that the Plaintiff had obtained a verdict in the cause, and that he the Plaintiff had served the subpoena in the cause himself, as he did not know but what the suit might have gone against him, and in that case he did not want to pay the Sheriff's fees, but he wanted to put all the costs he could on the Defendants, and wanted me to endorse the Subpoena as served by the said Sheriff, so that he could tax the Sheriff's fees for services of said Subpoena. That the said Edmund Cahill then produced to me the original Subpoena, a copy of which is hereto annexed, marked "B" and I endorsed thereon the memorandum: Rec'd Jan. 3rd, 1877—Fees, \$10—and the return: "The service of this subpoena appears by the affidavit hereunto annexed.—The answer of Archibald McKellar, Sheriff, per A. D. McPherson. Fees, \$10." That I then returned the said subpoena, with such endorsement hereon, to said Edmund Cahill, and at the same time told him he must make no use of the endorsements I had made on the subpoena, until I should see the Sheriff in reference thereto, as I did not know whether he would consent to such an arrangement or not.
3. That I afterwards spoke to the said Sheriff in reference thereto, and told him what Mr. Cahill had stated to me, and the said Sheriff positively refused to have anything to do with the matter, and refused to recognise the service of said subpoena in any way.
4. That afterwards, on the eighth day of January instant, the said Edmund Cahill returned to said Sheriff's office with said subpoena, and at his request, as I had made the endorsement of service on said subpoena, I then entered the said subpoena in the books of the said Sheriff, kept for entering Mesne Process received for service, and under the columns headed when and by whom served, and amount of fees. I entered—"Served by special arrangement— $\frac{1}{2}$  fees, \$5.02." That I then immediately gave said subpoena back to said Edmund Cahill, and he signed his initials, E. C. in the said Mesne Process Book therefore.
5. That the said Subpoena was not, nor were any copies thereof, served by the Sheriff, or by any one with his authority; and I do not know, and have no means of knowing, when or where said copies of said subpoena were served other than the affidavit of Samuel McNair, annexed to said subpoena, a copy of which affidavit is hereunto annexed, marked "C."
6. That the said Samuel McNair, the younger, whose affidavit is annexed to said Subpoena, is not an officer of or in the employ of said Sheriff of the County of Wentworth, and had no authority to make such service for, or on behalf of, said Sheriff.
7. That the affidavit of Edmund Cahill, filed in this cause, a copy of



which is hereunto annexed, marked "A" is untrue. That the said Edmund Cahill did not, nor did any one else, pay to the Sheriff of the County of Wentworth, the sum of ten dollars and four cents, as therein alleged for his fees, for service of the said writ of Subpoena, by paying the same to a Clerk in the office of the said Sheriff. That I am the said Clerk referred to in said affidavit; and that on the fifteenth day of February instant, the said Edmund Cahill paid me the sum of five dollars in respect of said subpoena, and no more, and no further or other sum has at any time been paid by any one to me in respect thereof.

(Signed), A. D. MCPHERSON.

Sworn before me at the City of Hamilton, in the County of Wentworth, this 20th day of February, A. D. 1877.

(Signed), HENRY WHATLEY.  
A Com. in B. R. &c., in and for said Co.

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#### IN THE QUEEN'S BENCH.

SAMUEL MCNAIR, Plaintiff, and JOHN W. GOERING, and ELLJAH S. WHIPPLE, Defendants.

I, William Alexander Hamilton Duff, of the City of Hamilton, in the County of Wentworth, Barrister-at-Law, make oath and say:

1. That John Barry, of the City of Hamilton, in the County of Wentworth, is the Defendants' Attorney herein, and that I am a partner of the same John Barry in the practice of the profession of Attorney-at-Law, &c.

2. That on the tenth day of February instant, at the request of the Defendants, in this cause, I caused a notice to be served on James Cahill, the Plaintiff's Attorney herein, that the said Defendants were desirous of paying the amount of the Plaintiff's verdict and costs herein, and requested him to let us have his bill of costs in this action for the purpose of settling the same.

3. That the said James Cahill did not comply with said request to furnish a bill of costs, and I heard nothing further of the said matter until the morning of the seventeenth instant, when I was advised by the Defendant Goering, that the said James Cahill had served a demand on him for payment of the amount of the said verdict, and of his said costs, alleging the same had been duly taxed.

4. That I thereupon attended at the office of the Deputy Clerk of the Crown and Pleas, in and for the County of Wentworth, in reference thereto, when I was informed that the said James Cahill had taxed his said costs, and signed judgment in this action for the amount of three hundred and sixteen dollars and twenty-five cents.

4. (a) That the said Defendants, or their said Attorney, were not, nor was any of them, served with a copy of said bill of costs, notice of taxation therefor, with a copy of said affidavit of disbursements therein referred to.

5. That the paper hereunto annexed, marked "D" is a true copy of the Plaintiff's Bill of Costs in this cause, as taxed by said Deputy Clerk, ex-

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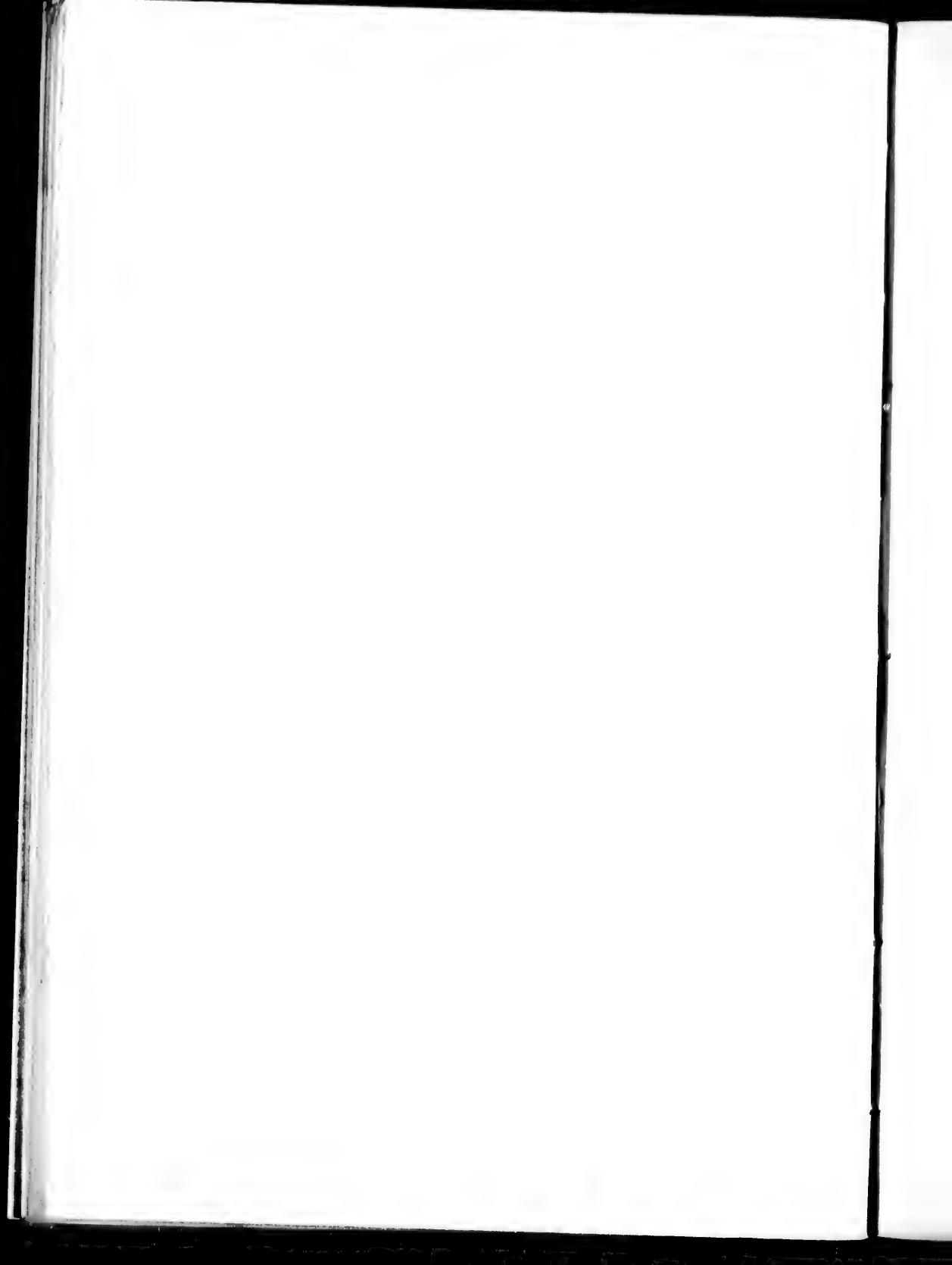
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cept the figures on the left hand side of the red line on the left hand margin of said bill of costs, which are not on the bill of costs filed with said Deputy Clerk ; the figures on right hand of the red line in the margin of said Bill being the amounts taken off said Bill on taxation by said Clerk.

6. That the Defendants object to the allowance to said Plaintiff on taxation of his said Bill of Costs of the amounts marked on the left hand side of the red line in the margin of said Bill in addition to the amounts taxed off of said Bill by said Deputy Clerk ; and the Defendants object to the allowance of said items on the following grounds : as to item number 4, because said action was not the subject of special endorsement the said action being for damages which were held to be unliquidated. As to item 7, because writ not sent to Sheriff of an outer County, and the charge for the Writ includes the attendance on Sheriff with same. As to item 10, because there is no evidence of its having been done, and if done, unnecessary. As to items 13 and 14, because the services were not performed, or if performed, unnecessary, because the Writ of Summons was only served on or about the fifteenth day of March, A.D. 1875, and appearance was entered on the 17th day of March, 1875, by said John Barry for both of said Defendants, and notice of said appearance was served on the Plaintiff's Attorney the same day said appearance was entered. As to item 24, because work was not performed. As to item 28, because it was merely a Joinder of Issue. As to items 29 and 31, because they are included in item 28. As to item 33, because it was not done, or if so, unnecessary. As to item 35, because order was only one folio in length, or if more than that, unnecessary length. As to item 41, not allowable, instructions for order being allowed in item 40. As to items 48, 49, 50, 51, 52 and 55, nothing to shew that services performed or necessary. As to item 63, unnecessary, and included in 61. As to item 54, because unnecessary and not taxable. As to item 75, because not warranted by length of Brief, and contains superfluous matter. As to item 93, because unnecessary there should be a separate attendance, and included in 91. As to items 112, 113 and 126, because they were unnecessary, the Defendants being ready to pay the amount of Plaintiff's damages and costs, and had notified the Plaintiff's Attorney to that effect. As to items 115, 119, 120, 121 and 122, because the services there charged for were not performed. As to item 125, because eight term fees have been charged, and proceedings were only taken in five terms after declaration filed. As to item 124, because larger fees were paid to some of said witnesses than the tariff allows ; and the witnesses residing in Hamilton attended an unnecessarily length of time. As to items 99, 100, 101, 102, 103 and 104, because the services there charged for were not performed, and them charged as paid were not paid. The services of said subpoena not having been made or recognised by the said Sheriff, or by any one with his authority, that the paper hereunto annexed " B " is a copy of said subpoena, and the affidavit thereto attached marked " C " is a true copy of the affidavit annexed to and filed with said subpoena : that the said Samuel McNair, the younger, who makes said affidavit, is a son of said Plaintiff, and is not an officer of said Sheriff ; that I am informed and believe that the said subpoena was not received in the Sheriff's office at all, for the purpose of having copies thereof served on the persons therein named, that the endorsement on said subpoena, " rec'd January 3rd,

1877—fees, \$10.04”—and the return endorsed thereon:—“The service of “this subpoena appears by the affidavit hereunto annexed. The answer of “Archibald McKellar, Sheriff, A. D. McPherson, fees, \$10.04,” and the affidavit of service thereunto annexed was, as I verily believe, made through the fraudulent connivance and contrivance of the Plaintiff's Attorney, the Plaintiff's son, the said Samuel McNair, the younger, and the said Angus D. McPherson, a Clerk in the office of said Sheriff. That I have examined the books of said Sheriff, and the said books show that the said subpoena did not come into the office of said Sheriff until the eighth day of February instant, and it is there entered as received from, and returned to the said James Cahill, per E. C., on said eighth day of February, and by arrangement,  $\frac{1}{2}$  fees, \$5.02 charged.

7. That the trial of this cause took place on the 20th day of January last.

8. That the said Defendants have paid into the hands of myself and co-partner, John Barry, the Defendants' said attorney, the full amount of the judgment recovered herein by said plaintiff, with instructions to pay the same, or such part thereof as may be found coming to the said Plaintiff, upon the final taxation of said Plaintiff's bill of costs.

(Signed), W. A. H DUFF.

Sworn before me at the City of Hamilton, in the County of Wentworth, this 28th day of February, A.D. 1877.

(Signed), W. F. WALKER.

Com., &c., in B. R. in and for said Co. Wentworth.

FEBRUARY 22nd, 1877.

RE MCNAIR vs. GOERING.

DEAR SIR,—I am instructed by the Sheriff to return you five dollars, the amount paid me by you on the 15th inst., *re* above, as he repudiates the whole transaction. I therefore enclose you check on the Bank of Commerce for \$5. Please acknowledge receipt.

Yours faithfully,

A. D. MCPHERSON.

E. Cahill, Esq., Barrister, &c., Hamilton.

Shortly after the debate in the Legislature on the Motion referred to, a number of letters appeared in the columns of the *Globe* and *Mail*, defending the serving of papers by Attorneys, and attacking the Sheriffs, for, as they alleged, attempting to increase their fees and skin the public. On the 6th of February one of these precious epistles appeared in the *Mail* over the signature, “A Practising Lawyer,” in which he discourses as follows:—“Now I know as a lawyer, that lawyers are in the habit of serving many papers, including writs, and they do it for two reasons: First to expedite business for if papers go into the Sheriff's hand they are likely to remain there for a long time), and secondly, to decrease the disbursements of the suit. Lawyers cannot charge, and do not, for serving Writs or Subpoenas.”

It is well known that the writer who lacked the courage or manliness to

attach his name to the letter is no other than Mr. Charlie Durand, of Toronto (who in addition to the discharge of his duties of a practising lawyer, performs those of a Sheriff's bailiff), whose taxed Bill of Costs we annex, and invite the public to compare it with his declaration that Lawyers "cannot charge, and do not for serving Writs or Subpoenas!!!" He collects within ten cents of two Sheriff's fees, in addition to his own—a new and novel method of "decreasing the disbursements of the suit." Good honest man is Charlie!!!

### COUNTY COURT, COUNTY OF YORK.

SUTOR, Plaintiff, vs. SERVOS, Defendant. }	Attorney's Own Fees.	Cash Paid by Attorneys.	Amount Taxed Off.
	\$ cts.	\$ cts.	\$ cts.
Instructions .....	2 00		
Attendance at Writ .....	50		
Paid for same .....		50	
Fee on Writ .....	1 00		
Copy .....	50		
Service .....	50		50
Notices of Writ, 50c. Copies, 50c. ....	1 00		1 00
Affidavit of Service .....	1 00		1 00
Attending to settle .....	50		50
Bill of Costs 50c. Copy and Service .....	1 00		50
	\$8 00	50	\$3 50
Add Disbursements .....	50		
	8 50		
Deduct Taxed off .....	3 50		
	\$5 00		

Received payment,

C. DURAND,

*Attorney for Plaintiff.*

Toronto, January 29th, 1878.

Taxed at \$5.

S. H. GHENT,

*C. C. C. County of Wentworth.*

If service of Summons had been made by the Sheriff he would have been entitled to \$1.80, and no more.

S. H. GHENT,

*C. C. C. County of Wentworth.*

SUTOR, Plaintiff,

vs.

SERVOS, Defendant.

*In the County Court.*

I, William Servos, make oath and say:—1st. That I was Defendant in the cause: 2nd. That the said Attorney told me he served the Writ himself to save costs, that if the Sheriff had made the service the costs would have been much heavier.

Sworn before me at Hamilton, in the County of } W.M. SERVOS.  
Wentworth, this 2nd day of Feb., 1878.

R. G. DAMPIER,

A Commissioner in B. R., &c., County of Wentworth.



The next champion who appears in the ring in defence of Process-serving is Mr. Francis Rye, of Barrie, a member of the law-firm of McCarthy, Boyce & Pepler. He is entitled to credit for having attached his proper name to his letter; unlike many others, he does not fight under cover. In the *Globe* of the 16th, February '77, he inserts a letter written on the 12th, in which he says: "*I have never known a case of a Solicitor charging his client with Sheriff's fees, or with a fee equal to what a Sheriff's fees would be for service of a Bill in Chancery where the Sheriff has not been employed, and as to charging Sheriff's fees besides his own fees for the service (which would be a fraudulent overcharge), this I need hardly say is a practice entirely unknown to my profession.*" "*The existence of such an officer as a taxing-master appears to have been forgotten by the writer of the article.*" If such a thing as charging a client with Sheriff's fees or a sum equal to what a Sheriff's fees would be, &c., is entirely unknown to the profession, such a thing as charging a Defendant with Sheriff's fees, or with a fee much larger than the Sheriff's fees would be, is not unknown to Mr. Rye, who, as it would appear from the annexed Bill of Costs, had entirely forgotten "*the existence of such an officer as a taxing-master*"—Although Mr. Rye's office is within a stone's throw of the Sheriff's office, he does not give him the Writ, but employs one of his own clerks as he tells us, and collects \$2.73 for his services, while the Sheriff would have got only \$1.80. We have frequently heard of "*good old Rye*" causing people to do queer and unlawful things; but this is the first time we have known himself to be the actor. We would respectfully ask "*good old Rye,*" if this charge of \$2.73 more than his own legal fee should be characterized as a "*fraudulent overcharge.*"

## WATSON v. SERVOS.

DEAR SIR,—I duly received your letter and enclosure of note and \$4 therein yesterday, and at once had Writ issued, and kept a clerk on the look out for Servos. He was at last found and served, and came into our office this morning to see about settling it. We gave a memorandum of the amount as follows: &c., &c.

Yours truly,

C. C. C.

FRANCIS RYE.

## In the County Court, County of Simcoe.

## WATSON v. SERVOS.

## Memorandum of Costs.

	1878.	\$ cts.	\$ cts.	\$ cts.
Nov. 16th, Instructions to sue .....	2	00		
" Writ and Paid.....	1	00	50	
" Copy of Writ .....		50		
" Special Endorsement .....		75		
" Copy of Endorsement .....		25		0 25
" Two Common Notices ...		50		0 50
" Attendance .....		25		0 25
" Affidavit of Service .		95		0 95
" Attending on Settlement.....		50		0 50
" Letter advising Plaintiff and paid		28		0 28
		\$6 98		\$2 73
Add Disbursements .....		50		

\$7 48—\$2 73 Taxed off—\$4 75

1878.

16th Nov.—Received the amount of above costs \$7.48 from Mr. Servos, such receipt to be without prejudice to the right of the Plaintiff to proceed to recover judgment in case Mr. Servos does not settle with plaintiff for amount of debt.

MCCARTHY, BOYCE & PEPLER,  
Plaintiff's Attorneys.

I hereby certify that I have taxed this Bill of Costs at \$4.75.

JOHN McDUGALL,  
Clerk County Court, County Waterloo.

If the Summons had been served by the Sheriff he would have been entitled to \$1.80, and no more.

JOHN McDUGALL,  
C. C. C. County of Waterloo.

During the debate on Mr. Sinclair's motion, Mr. Lauder, M.P.P. for East Grey, rose with all the solemnity and dignity of an aged ecclesiastic, and gravely shook his head and large Dundreary whiskers *three* times, as if to give more weight and dignity to what he was about to utter, and then spoke as follows:—"I object to compelling people to serve processes through the Sheriff when the Attorney himself would serve them for nothing!!!" see *Globe*, 11th Jany. 1877. *Noble and Patriotic sentiment!!* just such as might be expected from the lips of the "Saintly Lauder;" but alas for our fallen humanity, he like our great prototype, the first of our race, soon fell from a state of innocence into a state of sin and misery, as painfully exemplified in the following taxed Bill of Costs, on which he collects a sum equivalent to nearly three Sheriff's fees in addition to his own, and at the same time assures the innocent Defendant, that had he been served by the Sheriff the costs would have been much more. There must be something radically wrong in *Abraham's bosom*.

## COUNTY COURT, COUNTY YORK.

SUTER vs. SERVOS.		Cash paid by	
	Atty's. own fees	Att'n'y.	Amount t'x'd off.
	\$ cts.	\$ cts.	\$ cts.
Instructions ..	3 00		1 00
Writ ..	1 00	0 50	
Attending for ..	0 25		0 25
Special Endorsement ..	0 75		
Two Common Notices.....	0 50		
Copy of Writ ..	1 00		0 50
Attending to serve.....	1 00		1 00
Affidavit of Service and paid.....	1 00	0 20	1 20
Bill of Costs and attending to settle the same .....	1 00		1 00
	9 50	0 70	4 95
Add Disbursements .....	0 70		
	10 20		
Deduct Amount Taxed off .....	4 95		
	5 25		

Received Payment,

Toronto, Ont., Jan. 26th, 1878.

LAUDER &amp; PROCTOR,

I hereby certify that I have taxed the Bill of Costs at \$5.25.

JOHN McDUGALL,  
C. C. C. County Waterloo.

If the summons had been served by the Sheriff, he would have been entitled to \$1.80, and no more.

SUTER, Plaintiff.	}	In the County Court.
vs.		
SERVOS, Defendant.		

I, William Servos make oath and say ; that I was the Defendant in this cause.

That having expressed dissatisfaction at the amount of the costs, both Lauder and Proctor assured me that had the service been made by the Sheriff instead of by themselves, the costs would have been much larger.

WM. SERVOS.

Sworn before me, at Hamilton, in the County of Wentworth, this 2nd day of February, 1878.

R. G. DAMPIER,  
A Commissioner in B. R., &c., County of Wentworth.

During the debate on Mr. Sinclair's motion, Mr. Deacon, then M.P.P. for Renfrew, rose and delivered himself in the following eloquent strains :

"He would have thought that the Attorney General would have informed the Hon. member for North Bruce (Mr. Sinclair), and through him that section of the Country, that though the Sheriffs were not sufficiently paid, that if the Sheriffs were in a position to complain, they had neither this House, nor the Judges of the Superior Courts (who made the rules under which they receive their fees), to blame for it. The Insolvent Act (over which the Dominion has exclusive control) has done a great deal to deprive the Sheriffs of a large amount of their income ; so much so, as almost to render their offices unremunerative at one time ; but he (Mr. Deacon) contended that a most liberal tariff had been framed by the Judges on behalf of the Sheriffs.

"The Attorney General ought also to have informed the member for North Bruce, that if the papers were served by the profession, it was at the expense of the Profession itself," *Vide Mail*, January 11th, '77. Noble sentiment from the good Deacon. The Sheriffs have always been fairly and most generously dealt with by the Judges of the Superior Courts, and the tariff last made for them, and to which Mr. Deacon refers, is one with which the Sheriffs are perfectly satisfied ; but they fail to see any special advantage in the tariff (if as in Mr. Deacon's own case, which we publish below) the Lawyers take the fees. If it's all the same to them, the Sheriffs would exchange, give the Lawyers the Tariff, and the Sheriffs take the fees.

We now invite the public to compare Mr. Deacon's practices, with his public utterances—he issued and served the writ on the following case :—

BISHOP	}	COUNTY COURT.	{	\$7.00.
vs.		To amount of Costs in the case as per		
DOUGLAS		Mr. Deacon's Receipt.		

Pembroke, 7th October, 1879.

Received from Mr. Joseph Douglas the sum of Seven Dollars costs, in the County Court of BISHOP vs. DOUGLAS to date, but without any agreement to stay proceedings in suit.

THOMAS DEACON,  
(W. H. D.)

I arrived at the Metropolitan Hotel in Pembroke, at 10 P. M. on the evening of 7th October, 1879, registered my name, and was immediately served by a clerk named Deacon, from Mr. Deacon's Law Office. I at once paid his costs amounting to seven dollars, for which he gave the foregoing receipt. There were no letters, notices, or any other paper than the Writ of Summons served upon me.

JOSEPH DOUGLAS.

### COUNTY COURT, COUNTY OF PEMBROKE.

BISHOP	}	The service having been made by the Attorney himself,
vs.		and the costs having been paid forthwith by the Defendant,
DOUGLAS		Douglas. The Attorney would be entitled to the following sums and no more :

Instructions to sue.....	\$2 00
Writ, and paid for.....	1 50
Copy of Writ.....	0 50
Special Endorsement.....	0 75

\$4 75

Amount Charged 7 00

Taxed off..... \$2 25

I hereby certify that I have taxed this Bill of Costs at Four Dollars and seventy-five cents.

JOHN MCDUGALL,  
C. C. C. County Waterloo.

If the Summons had been served by the Sheriff, he would have been entitled to \$1.80, and no more.

Per M. MCDUGALL,  
C. C. C.

Here we have Mr. Deacon taking more than a sum equal to the Sheriff's fee, in addition to his own legal fees. No doubt he will, in self defence, quote his ever memorable speech of the 10th Jan., 1877, in which he tells the House, and the Country, that "*a most liberal Tariff had been framed by the Judges on behalf of the Sheriffs,*" and say let them keep the tariff, and let me keep the fees; or he may undertake to demonstrate, to the satisfaction of the Attorney General, the Country, and the Member for

North Bruce, that the declaration in the speech referred to, in which he says: "*that if papers are served by the Profession, it is at the expense of the Profession itself*" is absolutely true; he will tell the Attorney General that, although it would appear to the uninitiated, by a reference to the receipt, and the taxing master's taxed Bill of Costs, that the two Dollars and twenty-five cents were taken wrongfully from the pockets of Defendant Douglas, yet in fact that it was not so "*that it was at the expense of the Profession itself*" ! ! ! Truly thou art a Deacon fearfully and wonderfully made.

## COUNTY COURT, COUNTY OF BRANT.

SMITH, Plaintiff. <i>vs.</i> MERCER, Defendant.	Attorney's Own Fees.	Cash paid by Attorney.	Amount Taxed Off.
	\$ cts.	\$ cts.	\$ cts.
Instructions.....	2 00		25
Letter .....	25		
Summons and paid .....	2 00	50	1 00
Copy, 50c. Special Endorsement, 75c .....	1 25		
Two Common Notices.....	50		50
Copy Endorsement.....	50		50
Attending Service of Writ, &c.....	50		50
Bill 50c. Copy, 25c.....	75		25
Affidavit of Service and paid.....	95	20	1 15
Fee in Settlement, &c.....	1 00		1 00
	\$9 70	70	\$5 15
	70		
	\$10 40		
Deduct amount taxed off.....	5 15		
	\$5 25		

Received Payment,

January 29th, 1878.

HARDY, WILKES &amp; JONES.

I certify that I have taxed this Bill of Costs at \$5.25.

S. H. GHENT,

February 2nd, 1878.

C. C. C. County of Wentworth.

If summons had been served by the Sheriff he would have been entitled to \$1.80, and no more.

S. H. GHENT,

C. C. C. County of Wentworth.

SMITH  
vs.  
MERCER.

County Court.

I, William K. Mercer make oath and say: That I was the Defendant in this cause, that Mr. Wilkes assured me he had the Writ served from his office, by doing which he had saved me the Sheriff's fees.

W. K. MERCER.

Sworn before me at Hamilton, in the County of Wentworth, this 2nd day of February, 1878.

R. G. DAMPIER,

A. Com. in B. R. &amp;c., County of Wentworth.

During the debate Mr. Meredith moved the Motion be amended, by adding the following words thereto, viz: "also the cases, if any, in which fees for services of process have been taxed, where service has not been affected by the Sheriff, and also the fees paid to the Sheriff for services of process in each case."

We must refer Mr. Meredith to the case of McNair *versus* Goering & Whipple, printed herewith, as a complete illustration of the *modus operandi*, by which Bills of Costs are taxed, and Sheriff's fees collected where service of Process was not effected by the Sheriff or his officer.

We submit that Legislation on this subject is more urgent than it was on the matter of Members' Indemnity, which occupied so much time and attention during the last Session of Parliament.

Mr. Meredith should have informed the House, and the country, that at least seventy-five per cent. of the actions commenced, and in which Writs, &c., are served, never go to Judgment, but are settled in the Attorney's office, where the Bill of Costs is made out and paid, without ever being subjected to the scrutinizing eye of the taxing-master; it is in this way, that such members of the Bar as are engaged in Process-serving reap a rich harvest in the shape of fees, at the expense of the Defendant and Sheriff, as beautifully exemplified in the following Bill of Costs from Mr. Meredith's own office; in which he collects *five dollars and twenty-five cents*, over and above his own legal fees, from the Defendant, being within fifteen cents of *three* sheriffs' fees, and he also, as he states in his letter, laid his client under a small contribution. Read the following:

### IN THE COUNTY COURT, COUNTY OF MIDDLESEX.

THOMPSON, } vs. SIMPSON. }	BILL OF COSTS.		
	Instructions .....	\$2 00	
28	Letter .....	25	03
	Writ, and appearance for .....	1 00	50
	Copy .....	50	
25	Special Endorsement .....	1 00	
50	Copy .....	50	
25	Notices .....	25	
50	Attending to serve .....	50	
1 00	Service of Writ .....	1 00	
94	Affidavit of service .....	94	
53	Letters to Client .....	50	03
100	Settlement Bills .....	1 00	
	<hr/>		
\$5 25		\$9 44	\$0 56
		0 56	
		<hr/>	
		\$10 09	
	Taxed off .....	5 25	
		<hr/>	
		\$4 75	

Rec'd payment, 4th Dec. 1878.

MEREDITH & MEREDITH,

I, John McDougall, Clerk of the County Court, County of Waterloo, do hereby certify that I have taxed, and allowed in the above Bill of Costs, the sum of five dollars and eighty one cents.

JOHN MCDOUGALL,  
Clerk C. C. Co. Waterloo.

County Court Clerk's Chambers,  
Berlin, Aug 14th, 1879.



LONDON, ONT., December 19th, 1879.

JOHN R. THOMSON, Esq., *Windsor*.

DEAR SIR,—Yourself *vs.* Simpson.—We enclose you herewith \$3 in full of amount due you after deducting \$1, our charges against you.

Yours truly,

MEREDITH &amp; MEREDITH.

### IN THE COUNTY COURT OF THE COUNTY OF FRONTENAC.

CHARLES E. WILLIAMS, Plaintiff,

*vs.*

JOHN WOOD, Defendant.

Instructions to sue .....	\$2 00	
Writ Fee on .....	1 00	
15 Paid for .....		65
Copy .....	50	
Special Endorsement and Copy .....	75	
50 Notices Endorsed .....	50	
25 Attending to serve .....	25	
95 Affidavit of Service .....	95	
25 Bill of Costs, and attending Settlement .....	1 00	
Disbursed .....	65	
	<hr/>	
	\$7 60	
Taxed off .....	2 10	
	<hr/>	
	\$5 50	

Received payment,

December 11th, 1878.

BAWDEN &amp; MACHAR.

Examined and Taxed this 2nd day of September, 1879.

DAVID McLAWS,  
*C. C. C. Elgin.*

### STATEMENT of Writ of Summons and Bills of Complaint issued in Ontario in the year 1876.

NAME OF COUNTY.	Writs in Superior Courts.	Writs in Inferior Court.	Total of Writs.	Bills of Chancery.
1 Algoma .....	3	35	38	1
2 Brant .....	99	237	336	56
3 Bruce .....	141	246	387	33
4 Carleton .....	474	779	1253	157
5 Elgin .....	92	149	241	1
6 Essex .....	126	138	264	47
7 Frontenac .....	196	335	501	59
8 Grey .....	118	140	268	20
9 Haldimand .....	34	47	81	2
10 Halton .....	61	117	178	13
11 Hastings .....	336	497	833	154
12 Huron .....	152	178	330	64
13 Kent .....	139	214	352	32
14 Lambton .....	87	115	202	23
15 Lanark .....	130	201	331	48
16 Leeds and Grenville .....	161	165	326	29
17 Lennox and Addington .....	116	116	233	174
18 Lincoln .....	127	334	461	71
19 Middlesex .....	438	822	1260	114
20 Norfolk .....	89	296	385	49

STATEMENT of Writs of Summons and Bills of Complaint issued, &c.—*Con.*

NAME OF COUNTY.	Writs in Superior Courts.	Writs in Inferior Court.	Total of Writs.	Bills of Chancery.
21 Northumberland and Durham.....	299	340	639	58
22 Ontario .....	165	318	483	61
23 Oxford .....	129	193	322	75
24 Peel .....	40	81	121	24
25 Perth .....	119	159	278	74
26 Peterborough .....	86	138	224	64
27 Prescott and Russell .....	28	58	86	18
28 Prince Edward.....	51	90	140	4
29 Renfrew .....	82	170	252	1
30 Simcoe .....	260	345	605	59
31 Stormont, Dundas and Glengarry ...	176	383	559	58
32 Victoria .....	110	183	293	51
33 Waterloo .....	62	125	186	30
34 Welland .....	45	111	156	—
35 Wellington .....	270	394	664	74
36 Wentworth .....	404	779	1183	163
37 York .....	1141	2216	2357	618
	6556	11245	17801	2579

## STATEMENT of No. of Bills in Chancery and Writs of Summons in the Superior and County Courts, served by the Sheriffs in Ontario during the year 1876.

NAME OF COUNTIES.	Bills in Chancery.	Superior Court Writs Served.	No. Co. Court Writs Served.	Total.
1 Algoma.....	1	3	13	17
2 Brant.....	24	45	131	202
3 Bruce.....	31	71	168	700
4 Carleton.....	101	298	609	1002
5 Elgin.....	26	70	213	309
6 Essex.....	27	79	155	261
7 Frontenac.....	21	55	78	154
8 Grey.....	27	75	143	245
9 Haldimand.....	16	18	78	112
10 Halton.....	16	48	125	189
11 Hastings.....	54	92	153	299
12 Huron.....	28	60	164	252
13 Kent.....	41	93	207	341
14 Lambton.....	18	64	127	209
15 Lanark.....	13	38	120	171
16 Leeds and Grenville.....	26	81	117	224
17 Lennox and Addington.....	34	121	145	300
18 Lincoln.....	45	106	277	428
19 Middlesex.....	23	95	210	328
20 Norfolk.....	9	54	142	205
21 Northumberland and Durham.....	48	130	226	404
22 Ontario.....	28	70	174	272
23 Oxford.....	44	87	177	308
24 Peel.....	16	25	74	115
25 Perth.....	31	72	119	222
26 Peterborough.....	32	46	101	179
27 Prescott and Russell.....	16	47	71	134
28 Prince Edward.....	24	48	114	186
29 Renfrew.....	13	70	152	235
30 Simcoe.....	78	190	426	694
31 Stormont, Dund., Glen.....	29	25	91	145
32 Victoria.....	48	66	176	290
33 Waterloo.....	7	33	75	115
34 Welland.....	30	56	155	241
35 Wellington.....	51	110	259	420
36 Wentworth.....	67	124	292	483
37 York.....	145	280	676	1101
	1288	3045	6733	11066

Grand totals of Bills in Chancery, and Writs of Summons issued in the year 1876 are,

In Superior Courts.....	6,556
County Courts.....	11,245
Chancery.....	2,579

20,380

No. of Bills in Chancery and Writs of Summons served by the

Sheriffs.....	11,066
Served by Attorneys.....	9,317

20,383

In 1877 the following return was obtained of the number of Writs and Bills of Complaint issued in Ontario in the preceding year :

In the Superior Courts.....	6,556
“ Inferior “.....	11,245
“ Chancery “.....	2,579

20,380

The service fees on these, exclusive of mileage would be :

In the Superior Courts.....	6,556 @ \$2 70	\$17,701 20
“ Inferior “.....	11,245 @ 1 80	20,241 00
“ Chancery “.....	2,579 @ 2 25	5,802 75

\$43,744 95

The serving of the 20,380 Writs and Bills of Complaint issued in 1876, as above, were divided between the Sheriffs and Lawyers as follows :—

#### SERVED BY THE SHERIFFS.

In the Superior Court.....	3,045 @ \$2 70	8,221 50	
“ Inferior “.....	6,733 @ 1 80	12,219 40	
“ Chancery “.....	1,288 @ 2 25	2,898 00	\$23,238 90

#### SERVED BY THE ATTORNEYS.

In the Superior Court.....	3,511 @ \$2 70	9,479 79	
“ Inferior “.....	4,512 @ 1 80	8,121 60	
“ Chancery “.....	1,291 @ 2 25	2,904 75	\$20,506 05

\$43,744 95

It will be seen from the foregoing statement, that the Sheriffs have been deprived of the fees on 9,317 Writs of Summons and Bills of Complaint, amounting to \$20,506.05, and the sum was not saved to the litigants as we were told it would be, both verbally and through the columns of the Press; but has been collected, with much more, by those engaged in Process-serving, as fully established by the taxed Bills of Costs herewith published, some of which are from the offices of gentlemen who stated on the floor of Parliament, and through the public press, that the services were made by the Profession for the purely benevolent object of saving costs to the litigant !!! that the Sheriff's fees, or a sum equivalent to Sheriff's fees, was not, and could not be collected yet, in the face of such declarations we find the very gentlemen who made them, collecting, in addition to their own legal fees, more than double Sheriff's fees in many cases.

The Writ of Summons in the eight taxed bills of costs herewith published,

having been served in Towns and Cities, no mileage would be charged; therefore the Sheriff's fees, had he made the services, would have been as follows:

1 Superior Court Writ of Summons at .....	\$ 2 70
6 County Court Writs of Summons at \$1.80. ....	10 80
	<hr/>
	\$13 50

On looking at the foregoing Bills of Costs it will be found that, in addition to their own legal fees, those who made the services collected from the Defendants the snug little sum of \$27.63, being \$14.13 pocketed by them in addition to *their own* and the *Sheriff's fees*; or an additional sum of \$2.02 on each Writ over and above the Lawyer's and the Sheriff's legal fees—in other words they collected on these seven Summonses, in addition to their *own legal fees*, the sum of \$3.94 on each case, being thirty-four cents more than *two* Sheriff's fees on each. We may fairly presume that the tariff in these seven taxed Bills of Costs is as near as may be the one adopted, and acted upon by such members of the legal profession as are engaged in Process-serving. Assuming that to be the case, (and no other conclusion can be arrived at from the data before us, the 9,317 Bills in Chancery and Writs of Summons served by the Profession themselves, must have cost the litigants as follows:

Sheriffs' fees on 9,317 Bills in Chancery and Summonses .....	\$20,506 05
Additional charge by Profession of \$2.02 on each Writ and Bill .....	18,820 34
	<hr/>
	\$39,326 39

It will be seen that the service of the 9,317 Writs of Summons and Bills in Chancery, served by the Profession, cost the litigants within \$1,686.05 of double the amount it would have cost, had the services been made by the Sheriffs—or within \$4,448.85 of as much as it would have cost to have had the whole 20,380 served through the Sheriffs, viz:

The Sheriffs' fees on the 20,380 Bills in Chancery and Writs of Summons issued in 1876, would be.....	\$43,774 94
Of these the Lawyers served 9,317, which, as we have shown, cost the litigants .....	39, 26 39
	<hr/>
	\$4,448 55

It will be seen that the service of 9,317 Bills of Chancery, and Writs of Summons by Lawyers, cost within \$4,448.55 of as much as the whole 20,380 would have cost, had they been served by the Sheriffs. Such are the advantages of Process-serving by Lawyers.

We have so far dealt with the question of Process-serving, and the way in which the Sheriff's fees are collected, where the case does not go to Judgment, but is settled in the Lawyer's office; there the Bill of Costs is prepared, and paid, and as a rule includes the Sheriff's fees, or a sum equivalent thereto, as proven in the cases we have given, and is never submitted to the scrutinizing eye of the Taxing Officer.

We shall now proceed to explain to the public how the Sheriff's fees, and

much more are collected after the case goes to Judgment, and how the Sheriff is utilized to collect his own fees, and much more, and hand them to the Attorney. The *modus operandi* by which this ingenious device is worked, is as follows:—The Lawyer serves the Writ of Summons, the Defendant, it may be, defends the suit, and Judgment is obtained against him, or he permits Judgment to be entered against him by default; the Bill of Costs, without including the Sheriff's fees (which the Taxing-master would not allow, as the summons was not served by the Sheriff), are taxed by the Taxing-master. The Writ of Execution is then issued, and placed in the Sheriff's hands, with an instruction "to levy and collect so much for damages, so much for taxed costs, and so much for *this Writ* with his own costs and charges." The price of the Writ never was submitted to the Taxing-officer, the Attorney fixes his own price, ranging from two to four hundred per cent. above the Legal Tariff, and commands the Sheriff to collect it. If the Sheriff demurs, or hints that the charge for the Writ is high, he is told he has no right to offer an opinion, his duty being to do as he is told, or it may be hinted to him that if he does not collect the amount asked, all papers will in future be served through other hands; thus reminding the Sheriff of the humiliating position he occupies, that his income does not depend so much on the tariff of fees the law provides for his services, or the care and fidelity with which he performs the duties of his office, as upon the slavish obedience with which he performs the commands of those who require him to collect such charges as they may see proper to make, be they right or wrong.

Below we give a list of 18 Writs of Execution, the Summonses in each cause having been served by the Attorneys; on these Writs of Execution the Sheriff is commanded to collect \$153.90, while the Taxing officer says the attorneys are entitled to only \$56.53, or a fraction over one-third the amount demanded.

No.	Nature of Writ.	Court.	Amo't Charg'd.	Legal Charge.	Taxed off.
1	Fl. Fa. Goods.	Q. B.	\$ 6 00	\$ 4 60	1 40
2	" "	"	12 00	4 60	7 40
3	" "	"	6 00	4 60	1 40
4	" "	C. P.	12 00	5 10	6 90
5	" "	"	12 00	4 60	7 40
6	" "	"	12 00	5 10	6 90
7	" "	C. C.	10 00	2 25	7 75
8	" "	"	4 00	2 25	1 75
9	" "	"	4 00	2 25	1 75
10	" "	"	8 00	2 25	5 75
11	" "	"	5 00	2 25	2 75
12	" "	"	6 00	2 25	3 75
13	" "	"	4 00	2 56	3 44
14	" "	"	10 00	2 25	1 75
15	" "	"	10 00	2 25	7 75
16	" "	"	10 00	2 25	7 75
17	" "	"	12 00	2 56	9 44
18	" "	"	10 00	2 56	7 44
Totals			\$153 00	56 33	300 47 <i>\$97.47</i>

I certify the foregoing to be a correct taxation of the fees in the above cases.

Hamilton, Feb. 11th, 1878.

S. H. GHENT,  
C. C. C.

If the Sheriff had served the Summonses in the above cases, his fees would have been as follows :

6 Superior Court Writs @ \$2.70 .....	\$16 20
12 County Court Writs @ \$1.50 .....	21 60
Amount of Sheriff's fees .....	\$37 80
Add Attorneys' legal fees for Writs of Execution as taxed .....	56 58
Total of Lawyers' and Sheriffs' fees .....	\$94 38

Ninety-four dollars and thirty-three cents would have been the Sheriffs and the Attorneys' fees. Therefore, if the \$153.00 be collected for the Attorneys, they will have had *their own fees, the Sheriffs' fees, and a further sum of \$58.57, being an average of \$3.25 in each case, which should never have been taken out of the litigant's pockets by attorney or Sheriff.*

We shall for the present only give one more example, and that is from the office of the Hon. J. G. Currie, of St. Catharines, and our apology for using the gentleman's name and a sample of his charges, is that he made himself particularly active in Parliament, in adopting measures ostensibly calculated to prevent imposition, or overcharges by the Sheriffs on the public. It was not only his privilege, but his bonnden duty as a Member of the House, to do so, and protect the public as far as he could from wrong doing on the part of the Sheriffs, or others. In the Session of 1877 he obtained a Committee of the House, with power to send for persons and papers, and enquire into all matters relating to the fees, emoluments and working of the Sheriff's office, and report the same to the House. Much was expected from this Committee, under the able direction of Mr. Currie as its chairman, but the public were doomed to disappointment; for no report was made, for which fact, no explanation has yet been given by the chairman: rumour has it, that the evidence would not warrant the conclusions he desired to arrive at and report, hence his silence.

In the session of 1879—Mr. Currie introduced a Bill making it imperative on Sheriffs to keep a daily record in a book, kept specially for that purpose, of the receipts and expenditures of their offices, and report the same to Parliament in the month of January in each year, or in default of so doing the penalty would be a forfeiture of office. The penalty is severe, but no doubt Mr. Currie deemed it necessary in the public interests it should be so, and we are not disposed to differ with him. Our object is to submit to his consideration the following charges for Writs of Execution, issued out of his own office, and for which he orders the Sheriff to collect for him the sum of \$30.00, while the Taxing-officer says he is only entitled to \$14.74, being less than half. We shall wait patiently for Mr. Currie's proposed measure for the protection of the public in such cases as this of his own.

No.	Writ of Fi. Fa. Goods.	Amount Charged.	Legal Charge.	Taxed off.
1	Writ of Fi. Fa. Goods .....	C. C. \$ 5 00	\$2 56	\$2 44
2	" Fi. Fa. Lands .....	C. C. 10 00	4 81	5 19
3	" Fi. Fa. Goods .....	C. C. 5 00	2 56	2 44
4	" Fi. Fa. Lands .....	C. C. 10 00	4 81	5 19
		\$30 00	\$14 74	\$15 26

I hereby certify that I have allowed and taxed the fees directed to be



made by the Sheriff, and endorsed on the Fi. Fa.'s at the sums set forth in the above statement.

Signed, S. H. GHENT,  
C. C. C.

Hamilton, Feb. 11th, 1878.

The two examples we have given are only fair specimens of what can be found in every Sheriff's office in Ontario. Surely some legislation should be had to protect both the Sheriffs and the public, in the matter of fees, and the overcharges on costs. The Sheriffs make no charge or complaint against the legal profession as such; on the contrary they are prepared to bear testimony to the large number of intellectual, accomplished, honest, upright men, who are to be found in their ranks, who frown down such practices as we have been exposing, and are prepared by every means in their power, in Parliament, and out of it, to aid in stamping out such acts of wrong-doing, as are now being practised on the Sheriffs and the public, by a portion of their members. It is against the latter class only that complaints are being made—this class, with a view of diverting public attention from the real question at issue, assert that the object of the Sheriffs is to increase their own fees, and add to the burdens of the people. The Sheriffs disclaim any such intention, and as an earnest of their sincerity in this matter, publish herewith a draft of a bill in which they propose that not less than *ten per cent.* of their fees shall be distributed among the county Municipalities, for the payment of Jurors, or such other object as the councils may in their wisdom deem best. They do not make this proposal because their fees and emoluments are too high, but because under the present system, nearly fifty per cent. of the fees assigned them by law for Process-serving, is pocketed by the Attorneys, and acting on the old adage, "that half a loaf is better than no bread," they believe it is better to surrender ten per cent. and secure thirty-five or forty per cent. of the fifty they now lose. Such an arrangement would be much more advantageous to the Sheriffs and the public, than the system of placing half the Sheriff's fees, and as much from the Defendant in the pockets of the Attorneys, as is now being done.

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## AN ACT

To provide for the Service by Sheriffs of Bills in Chancery, Writs of Summons issued out of the Superior Courts of Common Law and County Courts of Ontario, and other Process.

HER MAJESTY, *by and with the advice and consent of the Legislative Assembly, enacts as follows:—*

1st.—That the service in the Province of Ontario of all Bills in Chancery and Writs of Summons issued out of the Superior Courts of Common Law, or the County Courts of the Province of Ontario, and all other Process or Papers issued out of any of the said Courts requiring personal service, shall be made by the Sheriff of the County in which the service is to be effected; and unless such service is so made, it shall be ineffectual and void except as hereinafter provided.

2nd.—Provided that if any such service shall be performed by any person other than the Sheriff, his Bailiff or officer, and such service notified to the Sheriff, by handing or mailing to him, by registered letter, within twenty-four hours after such service, the original Writ, Process or Paper, with a proper affidavit of service, mileage and stamping, as hereinafter provided attached thereto; or in case of a Bill in Chancery, a proper Affidavit of service, mileage and stamping, as required by the provisions of this Act. Then the Sheriff may enter such Bill, Writ, Process or Paper, in his Process-Book, and he shall stamp the same with the proper stamps, and also seal the same with his seal of office, and endorse on the Writ, Process, Paper or Affidavit so returned, that the service so effected was done by his authority; in which case, the service so made shall be effectual and valid, as if made by the Sheriff, his Bailiff, or Officer, and the Sheriff shall be entitled to the like fees, to which he would have been entitled, had the service been effected by himself, or his authorized Bailiff or Officer.

3rd.—That for the convenience of Suitors, or their Attorneys or Solicitors, in any Town or incorporated Village in any County outside the County Town the Sheriff of each County shall appoint a Bailiff or Officer in each Town or incorporated Village, in the County at a greater distance than fifteen miles from the County Town, and in which there are two or more Attorneys or Solicitors practising separately, which Bailiff or Officer shall have authority to receive, stamp and serve, for and on behalf of the said Sheriff, all such Bills in Chancery, Writs of Summons, and other Process or Papers ~~as may be issued~~ as may be issued by such Attorneys or Solicitors ~~in~~ *in*

4th.—That when services are effected under the last preceding section, the Bailiff or Officer shall forthwith, after such service, return to the Sheriff of the County the original Writ of Summons or other Process or Paper, or the Affidavit of Service, mileage and stamping thereof, or in the case of a

*except writs of execution*

*Town or village nearer to such Town or village than to the County Town, and which point is boundary shall be agreed upon between the Sheriff and Bailiff*

Bill in Chancery, the Affidavit of Service, with his own Affidavit of such service, mileage, and stamping of the copies thereof, and such Sheriff shall stamp the original Writ of Summons and Affidavit of the Service of the Bill in Chancery, or other Process or Papers, or the Affidavit of Service thereof, with the stamps required under the provisions of this Act ; and shall also seal them with his seal of office.

5th.—The Sheriff shall enter such Writ of Summons, and Bills of Complaint, or other Process or Papers in his Process Book and shall be entitled to the fees thereon as shown by the Affidavit of his Bailiff or Officer.

6th.—That should any such Sheriff fail to appoint a Bailiff or Officer in any such Town or Village as provided by the third section of this Act, after ten day's notice so to do, having been served upon him by any such Attorney or Solicitor, then on stamping such Bill in Chancery or any copy thereof, or any copy of Writ, or any Process or Paper, as hereinafter required by this Act; such Attorney or Solicitor may effect the service through or by any literate person, and on producing to the Taxing-officer an affidavit setting forth such failure on the part of the Sheriff, shall tax to the party entitled thereto for such service, the same fees as the Sheriff would have been entitled to, had the service been effected by or through him.

7th.—That all Bills in Chancery or copies thereof, and Affidavit of Service, and all Writs of Summons and copies thereof, and all other Process or Papers issued out of the Superior Courts of Law, or the County Courts of the Province of Ontario, shall be stamped as follows:

Original Writ of Summons in Superior Court.....	\$ 20 cts.
“ “ “ County “ .....	15 “
Affidavit of Service of Bill in Chancery.....	20 “
Every copy of Bill in Chancery, and every copy of Writ of Summons in the Superior and County Courts, and other Process or Papers .....	5 “

8th.—Every Sheriff, Bailiff or Officer, or other person who shall serve or execute any Bill in Chancery, or any Writ, or the Copy of Writ or Bill in Chancery, or other Process or Papers which is not duly stamped under the provisions of this Act, or who refuses or neglects to return such Writ, Bill in Chancery or other Process or Paper, to the Sheriff as required under Sec. 2. of this Act, shall be liable to all the penalties hereinafter provided, and every such service or execution contrary to the provisions of this Act, shall be void, and no recompense shall be allowed therefore.

9th.—The Lieutenant-Governor may from time to time, by Order in Council, direct stamps to be prepared for the purposes of this Act, which stamps shall be of one kind, but of the different denominations specified in section seven.

10th.—The Lieutenant-Governor may, by Order in Council, direct of what design and form, and of what colour or colours the said stamps and the different denominations thereof shall be used, and from time to time, as he finds or considers it convenient or expedient, may alter or change the same.

11th.—The Provincial Treasurer shall procure the necessary stamps re-

quired under this Act, from time to time, as they may be required, and shall keep an account of the numbers, denominations and amounts thereof, and of the dates at which they are received and delivered.

12th.—The Provincial Treasurer, upon payment to him of the proper amount by the Sheriff, shall deliver such of the said stamps as may be from time to time required by any such Sheriff, and he shall keep an account of the number, denomination, and amount thereof, according as he delivers them.

13th.—The Sheriff upon payment to him of the proper amount, by any Barrister or Attorney-at-Law, practising in his County, shall deliver such of the five cent stamps (not exceeding at any one time the value of one dollar) to any such Barrister or Attorney-at-Law, or Law-firm of which such Barrister or Attorney may be a member.

14th.—The Sheriff shall keep an account of the number, amount, and dates at which such stamps were delivered, and also of the number of papers returned to him by such Barrister, Attorney-at-Law, or Law-firm as having been served and stamped by them, or any one of them.

15th.—No more stamps shall be delivered to such Barrister, Attorney-at-Law or Law-firm, until they have returned to the Sheriff papers served and stamped by them, corresponding in number to the number of stamps received by them, except in cases where the stamps have been lost or destroyed, and satisfactorily explained to the Sheriff.

16th.—The Lieutenant-Governor in Council may, from time to time, make such regulations as may be thought expedient for an allowance for stamps which through mistake or inadvertence may have been improperly or unnecessarily used : and such allowance may be in money or other stamps in lieu of the stamps so allowed for.

17th.—Every Sheriff, Bailiff or other person who knowingly executes any Bill in Chancery or Writ of Summons or any other Process or Paper issued out of any of the Courts aforesaid, without being first duly stamped under this Act, or who refuses or neglects to return the original Writ of Summons, or other Process or Paper, or Affidavit of Service, mileage and stamping thereof, or in case of a Bill in Chancery, the Affidavit of Service thereof, to the Sheriff as required by the second section of this Act, shall be subjected for the first offence to a fine not exceeding ten dollars, and for the second and every subsequent offence of twenty dollars, and, in default of payment of such fines, shall be subject to imprisonment for one month, for the first offence ; and two months for the second and every subsequent offence.

18th.—When a stamp has under this Act, been attached to a Writ, or the copy of any Writ or any other Process or Paper, or in the case of a Bill of Chancery, to the Bill in Chancery, or the copy of any Bill in Chancery, or the Affidavit of Service thereof, it shall be the duty of the Sheriff, or his Bailiff, or officer, or other person forthwith to cancel such stamps, by writing or stamping, or impressing in ink, on such stamp, the date of such stamping, so as effectually to obliterate and cancel the stamp, and so as not to admit of its being used again.

19th.—Every Sheriff or other person who knowingly fails or omits to obliterate or cancel any stamp immediately after the same is used, shall be subject to a fine, not exceeding ten dollars for each offence, and in default of payment thereof, to imprisonment for a period of one month.

20th.—The Provincial Treasurer shall at the close of each year, pay over to the Treasurer of each County, the amount paid him by the Sheriff of any such County for stamps, less the actual cost thereof, and the money so paid shall be applied towards the payment of Jurors.

21st.—Every Taxing Master who shall tax any Bill of Costs for serving any Writ or Process, Bill in Chancery, or other Process or Paper, without being stamped with the stamps required under the provisions of this Act, and also sealed with the Official Seal of the Sheriff of the County in which the service was effected, shall be liable to all the penalties imposed under Section 17 of this Act.

22nd.—All fees imposed by this Act shall be paid to the County Treasurer for the general use of the County, and shall be recovered before any Court having competent jurisdiction to the amount, at the instance of any ratepayer in the County in which the service was made; and the production of any Writ, Bill of Chancery, or Affidavit of Service, thereof, or other Process or Paper, unstamped or stamped for too low and insufficient a sum, or the stamp of which is not properly and sufficiently obliterated, and cancelled or on the proof of any such Writ, Bill in Chancery or Affidavit of Service thereof, or other Process or Papers having been unstamped or not sufficiently stamped at the time it was served or executed as aforesaid, or of the stamp not having been properly and sufficiently obliterated or cancelled, shall be sufficient "*prima facie*" evidence of such Writ, Bill of Chancery or Affidavit of Service thereof, or other Process or Paper having knowingly and willingly so issued, served or executed without being or having been first stamped, or without the stamp having been properly and sufficiently obliterated and cancelled.

The Sheriffs' tariff of fees allowed by the Judges for serving papers in the Superior and County Courts is made up as follows:—

#### SUPERIOR COURTS.

Receiving and Filing.....	\$0 25		
Serving each Defendant.....	1 50		
Drawing Affidavit.....	0 25		
Commissioner.....	0 20	PRESENT	PROPOSED
Return.....	0 50	TARIFF.	TARIFF.
		\$2 70	\$2 45

#### COUNTY COURTS.

Receiving and Filing.....	\$0 10		
Serving each Defendant.....	1 00		
Drawing Affidavit.....	0 25		
Commissioner.....	0 20	PRESENT	PROPOSED
Return.....	0 25	TARIFF.	TARIFF.
		\$1 80	\$1 60



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COURT OF CHANCERY.

Receiving and Filing.....	\$0 25		
Serving each office copy Bill, including Affidavit of Service.....	1		
Warrant to Bailiff.....	0 50		
Return.....	0 50	PRESENT	PROPOSED
		TARIFF.	TARIFF.
		\$2 25	\$2 00

Under the proposed system of stamps the Sheriff's fees would be reduced as follows:—

Superior Court Summons, from \$2 70 to \$2 45	
County Court “ “ 1 80 “ 1 60	
Bills in Chancery “ 2 25 “ 2 00	

The proposed stamps, if placed on the Writs of Summons issued in 1876, would yield the following sums:—

6,556 Writs of Summons in Superior Court, @ 20 cts. ....	\$1,636 00
6,556 Copies do do do 5 “ .....	
11,215 Writs of Summons in County Court, @ 15 cts. ....	\$2,243 00
11,215 Copies do do do 5 “ .....	
2,579 Affidavits of Service of Bills in Chancery @ 20 c. ....	\$644 75
2,579 Copies of Bills in Chancery “ 5 .....	
	<hr/> \$4,526 75

Only one copy is estimated with each original in the above Statement, but many of them will have more, which we may safely estimate will bring the receipts from stamps up to \$5,000, being fully 10 per cent. of the fees on Process-serving.

In conclusion, we say that every officer should perform the duties assigned him by Law, and receive the emoluments attached thereto, by a strict observance of this rule, the work would be more punctually and better performed than when two or more are each engaged in it; no ill-feeling would arise, or cause of complaint be given; each moving and acting within the sphere of his own duty.

In these pages we have given a case where a young man served the Summons, and solemnly swore that he was a Sheriff's officer, when in fact the Sheriff was not aware of his existence; another young man made oath, that he paid the Sheriff's fees on these papers, amounting to \$10.00, when no such payment was made; these two false oaths were taken to secure to the Plaintiff's lawyer the paltry sum of five dollars more to his costs.

We contend that in view of these startling facts, and as a protection to the public, all papers requiring personal service should be recorded in the Sheriff's office, for what is there to prevent two men like these from going a little further, and for a consideration make oath that they had made service, when none was made, and obtain judgment which might be enforced against the Defendant's estate when he was in his grave.

*Memorandum of Summonses and other papers served in the County of Wentworth by others than the Sheriff, and for which charges were made :*

- |           |                                     |   |   |
|-----------|-------------------------------------|---|---|
| 1878      | BARNES                              | } | Served by a Division Court Bailiff, Fees \$8.68.<br>Sheriff's Bailiff quite as convenient.  |
| April 6th | <i>vs.</i><br>GARVIN.               |   |   |
| April 8th | OSLER                               | } | Served by a Division Court Bailiff, Fees \$3.59.<br>Sheriff's Bailiff was quite as convenient.  |
|           | <i>vs.</i><br>SMITH.                |   |   |
| April 12  | BARNES                              | } | Served by a Division Court Bailiff, Fees \$5.69.<br>Sheriff's Bailiff was quite as convenient.  |
|           | <i>vs.</i><br>BELLEMY.              |   |   |
| April 22  | MCPHAIL                             | } | Served by a Division Court Bailiff, Fees \$4.63.<br>Sheriff's Bailiff was quite as convenient.  |
|           | <i>vs.</i><br>REVELS.               |   |   |
|           | WILLIAMS                            | } | This Writ of Summons was sent from Toronto<br>to the Division Clerk at Dundas for service, and<br>he handed it to the Sheriff's Bailiff.  |
|           | <i>vs.</i>                          |   |   |
|           | FIELD.                              |   |   |
| Sept. 21  | DOMINION                            | } | This Writ of Summons was sent to Robertson<br>& Wardell, of Dundas, for service ; they handed<br>it to the Sheriff's Bailiff.   |
|           | ORGAN CO.<br><i>vs.</i><br>BURBANK. |   |   |
|           | STANLEY                             | } | This Subpoena was sent from London to Messrs.<br>Osler & Gwyn, of Dundas, for service ; they were<br>unable to find the Defendant, and handed the sub-<br>poena to the Sheriff for service.   |
|           | <i>vs.</i><br>RICE.                 |   |   |
|           | DUNN                                | } | In this cause one Defendant lived in the City and<br>the other in the Country ; the one in the City was<br>served by the Attorney himself, the one in the<br>Country was given to the Sheriff to serve.   |
|           | <i>vs.</i><br>COOK <i>et al.</i>    |   |   |
| Dec. 2    | WILSON                              | } | There were two Defendants in this cause, one<br>in the City, the other fifteen miles in the Coun-<br>try ; the one in the City was served by the At-<br>torney himself ; the Sheriff was favoured with the<br>serving of the other, at a time when the roads<br>were almost impassable. |
|           | <i>vs.</i><br>GILES <i>et al.</i>   |   |   |

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